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United States Application No. 09/611,447
Amdt. dated May 23, 2006
Reply to Office Action dated February 23, 2006

REMARKS

In the Office Action the Examiner has rejected Claims 1-5, 16, and 20 under 35 U.S.C. 112, first paragraph as failing to comply with the enablement requirement. The rejection is traversed as follows.

With respect, the Bandwidth Vector Mask described on pages 16 -17 of the description, in conjunction with Figure 7 teaches an example of how a label component comprises an indication of whether each channel of said plurality of channels is available for use in a label switched path. Specifically, on page 17 lines 20-21, we state "Each bit in a channel ID represents an STS-1 time slot and bit value of "0" represents an available STS-1 time slot." (emphasis added).

Thus the specification does describe example of providing an indication of whether each channel is available, and thus complies with 35 U.S.C. 112, first paragraph.

In the Office Action the Examiner has rejected "Claims 1-10, 16, 18-20, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fatehi et al. (US 6,600,583 B1), hereinafter referred to as Fatehi, in view of Jamoussi (Internet Draft, "Constraint-Based LSP Setup Using LDP") and in view of Chang et. al., (US 6, 111,673).

The Applicant respectfully submits that the subject matter claimed in claims 1-10, 16, 18-20, 22, and 23 patentably distinguishes over the cited prior art references as discussed below.

In brief, we argue (1) the rejection fails to establish a prima facie case of obviousness, for failing to provide evidence of why a person skilled in the art would be motivated to combine the references in the manner asserted in the OA; and (2) in any event, even if the references can be combined, they still do not teach the claimed invention.

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Starting with point (2) first, the references, even if combinable (which is denied), fail to teach all of the claim limitations. Without limiting the generality of the foregoing, none of the references, teach or suggest the highlighted portions of claim 1:

In a data communication network comprising a plurality of optical label switching routers and fiber optic links between said optical label switching routers, a method of representing optical network bandwidth, said method comprising:

assigning an optical label to a channel group, said channel group using one of said fiber optic links and comprising a plurality of channels, said label representing an ingress to egress mapping;

encoding said optical label so as to comprise a type field, a length field and a value field, where said value field comprises a label component and where said label component comprises an indication of whether each channel of said plurality of channels is available for use in a label switched path.

The present invention relates to optical label switching routers and networks and to a method of optical network bandwidth representation for a label switched path.

In the Office Action the Examiner states that the Fatehi reference discloses a method which includes assigning an optical label to a channel group, said channel group using one of said fiber optic links and comprising a plurality of channels citing Figure 13 and Col 8, lines 54-63.

As we previously argued, the wavelength update message discussed in the cited passage relates to an optical tag in the Fatehi reference and not a label.

We continue to disagree with the examiner's interpretation that the tags taught by Fatehi are labels. Multi-Protocol Label Switching (MPLS) is well known in the art and is discussed in the background section of the present application starting on page 3. A label means something to a person skilled in the art to which this application is directed.

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In any event, neither Fatehi, Chang or Jamoussi discusses or even suggests having a label with an indication of a channel available for use in a label switched path as claimed. The examiner cites Figure 13, and col 8, lines 54-63 for this limitation. With respect, neither this portion, or Fatehi reference generally teaches anything of the sort. Fatehi has nothing to do with Label switched paths. It doesn't even mention the word label, let alone label switched path.

Accordingly the Fatehi reference, even if combinable with the Jamoussi and Chang references, simply fails to teach or suggest the claimed invention. As such the rejection fails to establish a *prima facie* case.

For the Patent Office to combine references in an obviousness analysis, the Patent Office must do two things. First, the Patent Office must articulate a motivation to combine the references, and second, the Patent Office must support the articulated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994,999 (Fed. Cir. 1999). While the range of sources for the motivation is broad, the range of available sources does not diminish the requirement for actual evidence. *Id.* Once the Patent Office has properly combined the references, to establish *prima facie* obviousness, the Patent Office must still show where each and every claim element is shown. MPEP §2143.03.

The Fatehi and Chang references solve different problems and work in a completely different manner than the present invention. The Fatehi reference is directed to an optical internet router which minimizes conversion from optical to electrical signals: "In an all-optical internet (OI), signal conversion from optics to electronics should be avoided if possible, and if absolutely necessary it should take place in as few points as possible." (background, col 1, lines 11-14)

The Jamoussi reference teaches a method of Constraint Based Routing (CR-MPLS). It is not related to an all-optical network as described in Fatehi. Nor is Fatehi at all related to MPLS. In the rejection, the examiner attempts to provide a motivation for combining the references. However such a motivation is NOT supported by the references themselves, or any other evidence. They are simply assertions, which are based on hindsight, which is not allowed. Accordingly it is submitted that the grounds for combining Fatehi with Jamoussi is simply not supported, let alone combining these two references with Chang.

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Thus the rejection is improper for two reasons.

1) the rejection fails to establish a prima facie case; as it fails to show any evidence for motivation to combine. Furthermore, as the cited references are non analogous, from different fields, and offer different solutions to different problems, we submit that there is no motivation for a person skilled in the art to combine them;

2) even if proper to combine (which is denied), the combination fails to teach each and every limitation.

Similar arguments apply for the remaining claims. Accordingly, withdrawal of the rejection and allowance of the application is solicited.

Notwithstanding the generality of the foregoing neither reference whether considered alone or together discloses the further elements of claims 6, 7, and 8. The Official Action is actually silent with respect to claim 6. Regarding the rejection to claim 7, with respect, Figure 13 of the Fatehi reference simply does not teach an indication of a service type of a second network. Nor does Figure 13 teach an indication of a control protocol of said second network as stated in the rejection of claim 8. We argued this previously and our response to this rejection is not moot in light of the new ground of rejection. Accordingly we repeat it. No comments are made to support the rejection to claims after claim 8, so there is nothing to respond to.

Accordingly it is submitted that the rejections are improper and should be withdrawn and the case is ready for allowance.

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No fee is believed due for this submission. However, Applicant authorizes the Commissioner to debit any required fee from Deposit Account No. 501593, in the name of Borden Ladner Gervais LLP. The Commissioner is further authorized to debit any additional amount required, and to credit any overpayment to the above-noted deposit account.

Respectfully submitted,

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